

**IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION**

<p>ANNIE TIRSO, <i>Appellant,</i></p> <p style="text-align:center">v.</p> <p>DONALD TIRSO AND THE CHILDREN OF SEVERIANA TIRSO, <i>Appellees.</i></p>

Cite as: 2024 Palau 30
Civil Appeal No. 24-001
Appeal from Civil Action No. 20-014

Decided: November 6, 2024

Counsel for Appellant	Vameline Singeo
Counsel for Appellee Donald Tirso	Yukiwo Dengokl
Counsel for Appellees The Children of Severiana Tirso	William Ridpath

BEFORE: FRED M. ISAACS, Associate Justice, presiding
ALEXANDRO C. CASTRO, Associate Justice
DANIEL R. FOLEY, Associate Justice

Appeal from the Trial Division, the Honorable Kathleen M. Salii, Presiding Justice, presiding.

OPINION¹

PER CURIAM:

[¶ 1] Appellant Annie Tirso appeals the trial court’s decision to grant two partitioned lots, 2A-1 and 2B-1, to Appellees Donald Tirso and the children of Severiana Tirso. For the reasons set forth below, we **AFFIRM**.

¹ The parties did not request oral argument in this appeal. No party having requested oral argument, the appeal is submitted on the briefs. *See* ROP R. App. P. 34(a).

BACKGROUND

[¶ 2] This appeal stems from a quiet title action in which the trial court partitioned an approximately 31,731 square meter property among thirty-nine (39) familial heirs into twenty-five (25) lots, with each claimant receiving an equal portion of the total property. Two of the partitioned lots, 2A-1 and 2B-1, in Echang, Koror, were awarded to Appellees Donald Tirso and the Children of Severiana Tirso, respectively. The trial court determined that Appellees had stronger claims to the lots. Appellant Annie Tirso appeals this determination.

[¶ 3] Appellant and Appellee Donald Tirso are both part co-owners of the land. Each claims Lot 2A-1 on behalf of the current inhabitants, the family of Salvador Kintoki, for the purpose of keeping the current inhabitants happy and allowing them to live peacefully on the land. *See* Trial Tr. vol. 1, 159–60; Trial Tr. vol. 2, 435.

[¶ 4] Additionally, Appellant and Appellees the children of Severiana Tirso, claim Lot 2B-1. The house on the lot was built for Appellant and her sister, Severiana Tirso, by their father. Severiana died and left her heirs as tenants in common with Appellant. Currently, one of Severiana’s children, Vitores Fernando, is the sole inhabitant of the house on Lot 2B-1.

[¶ 5] All parties in the case agreed with the court that when partitioning and determining ownership of the land, to the extent reasonable, priority should be given to any current inhabitants to minimize disruption and relocation inconveniences. *In re: Matter of Quieting Title to Cadastral Lot No. 027 A 37*, Civ. Action No. 20-014 (Tr. Div. Dec. 27, 2023) [hereinafter, “2023 Decision”]. Appellant does not currently live on either lot 2A-1 or 2B-1.

STANDARD OF REVIEW

[¶ 6] We review matters of law de novo, findings of fact for clear error, and exercises of discretion for abuse of that discretion. *Obechou Lineage v. Ngeruangel Lineage of Mochouang Clan*, 2024 Palau 2 ¶ 5. Under clear error review, the trial court’s findings of fact will be set aside only if they “lack evidentiary support in the record such that no reasonable trier of fact could have reached the same conclusion.” *Etpison v. Rechucher*, 2022 Palau 2 ¶ 14. Generally, a discretionary act or ruling under review is presumptively correct and will not be overturned on appeal unless the decision was “arbitrary,

capricious, or manifestly unreasonable or because it stemmed from an improper motive.” *Rexid v. Becheserrak*, 2023 Palau 10 ¶ 8; *see generally Children of Kadoi v. Eberdong*, 2024 Palau 8.

DISCUSSION

[¶ 7] Appellant presents two issues on appeal to support her request for reversing the trial court’s decision. The first issue is whether the court lacked evidentiary support and provided sufficient explanation when awarding lot 2A-1 to Donald Tirso. The second issue is whether the court lacked evidentiary support and provided sufficient explanation when awarding lot 2B-1 to the children of Severiana Tirso.

I. Inheritance Equity Law

[¶ 8] Courts use the method of partitioning land held by tenants in common as an equitable remedy when there are conflicting or intractable claims of ownership. *In re Rudimch*, 16 ROP 289, 306–09 (Tr. Div. 2009) (explaining that intractable matters pertaining to land distribution are to be interpreted with law most consistent with equity). The Court exercises broad discretion when employing such equitable remedies. *See generally Belibei v. Belibei*, 14 ROP 96 (2007); 59A Am. Jur. 2d *Partition* § 59 (2015). In matters pertaining to descent and land distribution, a court acting in equity considers several factors, including familial lineage, cultural heirs, maintenance, intent upon building, and current and past inhabitants. *In re Estate of Delemel*, 1 ROP Intrm. 653A, 653C (1989).

[¶ 9] On appeal, the appellant bears the burden of proving error in the trial court’s equitable determination. *Glover v. Lund*, 2018 Palau 10 ¶ 2 (internal citations omitted); *Obakerbau v. Nat’l Weather Serv.*, 14 ROP 132, 135 (2007). The appellant must “point out specifically where the findings are clearly erroneous,” or else risk a determination of frivolity in bringing such lawsuit. *Ngetchab Lineage v. Klewei*, 16 ROP 219, 221 (2009) (quoting *Pachmayr Gun Works, Inc. v. Olin Matheison Chem. Corp.*, 502 F.2d 802, 807 (9th Cir. 1974)).

[¶ 10] We find that Appellant has failed to meet her burden by not pointing to specific, clearly erroneous findings. She incorrectly asserts that the court denied her both plots of land based on her not currently living in the village.

The judgment cites her living elsewhere *in addition to* the other factors noted above. As this is explained in the trial court's decision, we need not further discuss Appellant's residence as an evidentiary matter. *See* 2023 Decision at 4–5. Furthermore, at trial the parties consented to the trial court's general application of equitable remedies when parsing the claims to the partitioned land, which included consideration of each party's current residence. Insofar as this claim attempts to reopen evidentiary matters previously concluded, we find Appellant's arguments unsupported by the record.

II. Plot 2A-1

[¶ 11] During initial discussions of distribution, all parties agreed that priority should be given to any current inhabitants to minimize disruption. *See* 2023 Decision at 5. As previously noted, both Appellant and Appellee Donald Tirso claimed Plot 2A-1 for the main purpose of allowing the current inhabitants, the family of Salvador Kintoki, to continue to live peacefully on the land. We find that the trial court's directive that required the determination of ownership not result in the eviction of any current inhabitants achieves this goal and settles the issue.

[¶ 12] Turning to the matters of custom and equitable discretion, we find the record contains sufficient evidence of legitimate claims to the title by both parties, based on intestacy. While it may have been helpful to include a distinct explanation of the ownership determination of plot 2A-1, we find no error in the trial court's application of equitable distribution to determine the outcome of this case. There was enough evidentiary support from both parties for the trial court to reach a legal conclusion without mistake or error in the findings of fact.

III. Plot 2B-1

[¶ 13] As noted herein, the parties agreed to give preference to any current inhabitants of the land to minimize disruption. 2023 Decision at 5. Because both Appellant Annie and Appellees the Children of Severiana Tirso are tenants in common with equally strong ties to the land, we find the trial court correctly applied the principle of equity in its decision. *See In re Rudimch*, 16 ROP 289, 303–04. As one of the Appellees, Vitores Fernando, an heir of Severiana Tirso, is a current inhabitant of Plot 2B-1, we find it is a sound evidentiary conclusion

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that the trial court would award 2B-1 to Appellees. The trial court's explanation of its reasoning in the corrected decision further suggests no error of fact in its consideration of the record. *See* 2023 Decision at 2.

CONCLUSION

[¶ 14] For the foregoing reasons, we **AFFIRM** the Trial Division's decision.